

12405

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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|-----------------------------------------------|---|-----------------------------|
| CHRISTIAN DAIGRE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No.: 14 CV 1980 |
| v. |) | |
| |) | Judge: Elaine Bucklo |
| MEL DAVIS, Chief of Police of the |) | |
| Village of Robbins, in his individual |) | |
| and official capacities, TYRONE WARD, |) | Mag. Judge: Sheila Finnegan |
| Mayor of the Village of Robbins, in his |) | |
| individual and official capacities, JAMES E.) | | JURY TRIAL DEMANDED |
| COFFEY, SR., Village of Robbins Trustee, |) | |
| in his individual and official capacities, |) | |
| DAVID BRYANT, Village of Robbins |) | |
| Trustee, in his individual and official |) | |
| capacities, ILA DAVIS, Village of Robbins |) | |
| Trustee, in her individual and official |) | |
| capacities, LENNY JOHNSON, Village of |) | |
| Robbins Trustee, in his individual and |) | |
| official capacities, SHANTIEL SIMON, |) | |
| Village of Robbins Trustee, in his |) | |
| individual and official capacities, and |) | |
| CHANEL KELLY, Village of Robbins |) | |
| Trustee, in her individual and official |) | |
| capacities, ERNESTINE BECK- |) | |
| FULGHAM, Village of Robbins |) | |
| Administrator, in her individual and official |) | |
| capacities, and the VILLAGE OF ROBBINS,) | | |
| ILLINOIS, |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFF'S MOTION TO STRIKE OR FOR LEAVE TO FILE SUR-RESPONSE
TO DEFENDANTS' MOTION TO BAR DAMAGES, ALTERNATIVELY,
DEFENDANTS' FIFTH MOTION TO COMPEL DISCOVERY**

NOW COMES Plaintiff, CHRISTIAN DAIGRE, by and through one of his attorneys, Laura L. Scarry of DeANO & SCARRY, LLC, and respectfully moves this

Honorable Court to strike arguments made for the first time in Defendants' reply in support of their Motion to Bar Damages, or in the alternative, Defendants' Fifth Motion to Compel Discovery. Alternatively, Plaintiff requests leave to file a sur-response to Defendants' reply in support of their Motion to Bar Damages, or in the alternative, Defendants' Fifth Motion to Compel Discovery. In support thereof, Plaintiff states as follows:

1. On October 7, 2016, Defendants filed a "Motion to Bar Damages, Alternatively, Defendants' Fifth Motion to Compel." (See, Docket 193).
2. Per the Court's October 13, 2016 order (see Docket 197), Plaintiff filed his response on November 11, 2016. (See, Docket 209).
3. Per the Court's October 13, 2016 order, Defendants filed their reply on November 21, 2016. (See, Docket 215).
4. Defendants made new arguments in their reply brief that they had not presented in their original motion. Additionally, Defendants attached documents to their reply brief that had not been previously disclosed in discovery.
5. The Court should not entertain Defendants new arguments or rely on new evidence presented in their response. "It is well-settled that new arguments cannot be made for the first time in reply." *Gold v. Wolpert*, 876 F.2d 1327, 1331 n.6 (7th Cir. 1989). The policy behind such a rule is simple, "[r]eplay briefs are for replying, not for raising new arguments or arguments that could have been advanced in the opening brief." *Autotech Techs. Ltd. P'ship v. Automationdirect.com, Inc.*, 249 F.R.D. 530, 536 (N.D. Ill. 2008). This rule

also serves to "prevent the nonmoving party from being sandbagged." *Reis v. Robbins*, 2015 U.S. Dist. LEXIS 23207, 2015 WL 846526, at *2 (S.D. Ind. Feb. 26, 2015).

6. As such, this Court should grant Plaintiff's motion to strike those arguments and attached documents including the following:
 - a. Argument in section A.I. and corresponding new evidence/documents;
 - b. Argument in section A.III.a.-c. and corresponding new evidence/documents;
 - c. Argument in section B. and corresponding new evidence/documents;
 - d. Argument in section C. and corresponding new evidence/documents;
 - e. Argument in section D. that relies on arguments and corresponding new evidence/documents made in the previous sections described above.
7. Should this Court deny Plaintiff's motion to strike, Plaintiff then requests leave to file a sur-response to Plaintiff's Motion to Bar Damages, Alternatively, Defendants' Fifth Motion to Compel.

WHEREFORE, for all the forgoing reasons, Plaintiff, CHRISTIAN DAIGRE, requests that this Honorable Court grant his motion to strike arguments and corresponding new evidence/documents in the following sections of Defendants' reply brief: A.I.; A.III.a.-c.; B., C. and D that relies on arguments and corresponding new evidence/documents made in the previous sections, or in the alternative, grant him leave to file a sur-response to Defendants' Reply in Support of their Motion to Bar Damages,

Alternatively, Defendants' Fifth Motion to Compel Discovery, and grant him any further relief deemed appropriate.

Respectfully submitted,

CHRISTIAN DAIGRE

s/Laura L. Scarry

By: Laura L. Scarry,
One of Plaintiff's Attorneys

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